

## 46 Am. Jur. 2d Judges § 14

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### Judges

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### IV. Termination or Suspension of Office; Censure

#### A. Termination, Resignation, or Retirement

## § 14. Mandatory retirement provisions for judges

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[Who is exempt from definition of "employee," under sec. 11\(f\) of Age Discrimination in Employment Act \(ADEA\) \(29 U.S.C.A. sec. 630\(f\)\), so as to be excepted from coverage of Act, 110 A.L.R. Fed. 490](#)

State constitutional provisions which require retirement of state judges upon reaching a specified age are constitutional.<sup>1</sup> Thus, a constitutional amendment approved by the people pursuant to their inherent and indefeasible right to amend the constitution as they saw fit, which set the mandatory retirement age at 70 for judges, after which, subject to necessity and approval, judges could be assigned to serve as senior judges, did not violate equal protection under the state constitution, but was rationally related to the interests of the people in bringing in younger judges while retaining the services of willing and able retired judges, in permitting the orderly attrition of judges, in promoting the advancement of general considerations of judicial efficiency, and in insuring the fitness of the judiciary as a whole.<sup>2</sup>

The Age Discrimination in Employment Act (ADEA),<sup>3</sup> which prohibits arbitrary age discrimination in employment, exempts from its coverage persons "elected to public office,"<sup>4</sup> and elected state court judges are considered persons "elected to public office" under the ADEA.<sup>5</sup> Thus, state statutory or constitutional provisions, as applied to elected judges, requiring state court judges to retire upon reaching a specified age will withstand ADEA challenges.<sup>6</sup> Appointed state court judges are within the exception for "appointees on the policymaking level" and are not covered by the protections of the ADEA.<sup>7</sup>

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Footnotes

- 1 Zielasko v. State of Ohio, 873 F.2d 957 (6th Cir. 1989); Martin v. State, 330 N.C. 412, 410 S.E.2d 474 (1991).
- 2 Driscoll v. Corbett, 620 Pa. 494, 69 A.3d 197 (2013).
- 3 29 U.S.C.A. §§ 621 to 634.
- 4 29 U.S.C.A. § 630(f).
- 5 Gondelman v. Com., 120 Pa. Commw. 624, 550 A.2d 814 (1988).
- 6 Diamond v. Cuomo, 70 N.Y.2d 338, 520 N.Y.S.2d 732, 514 N.E.2d 1356 (1987).
- 7 Gregory v. Ashcroft, 501 U.S. 452, 111 S. Ct. 2395, 115 L. Ed. 2d 410 (1991).

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